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Redesign of The Presidential Threshold System Following The Constitutional Court Decision Number 62/PUU-XXII/2024

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Abstract

Since the 2004 elections, Indonesia has implemented a presidential threshold system for nominating the president and vice president. This system requires a political party or coalition to receive a certain percentage of nationally valid votes or acquire a certain number of seats in the DPR in order to nominate a presidential candidate. However, this system's implementation is considered one of the causes of the strengthening of oligarchic practices among political party elites, as well as a deviation from the democratic values of the

Indonesian state philosophy, or Pancasila. In January 2025, however, the Constitutional Court canceled the presidential threshold policy for the nomination of the president and vice president through Decision Number 62/PUU-XXII/2024. This research discusses the redesign of the presidential threshold following this decision. The study employs a qualitative approach and draws on Pippa Norris's theory of political recruitment and Wriggs's concept of legal prisms. This study concludes that the presidential threshold system requires conceptual reform so that it is guided not only by the quantity of valid votes or seats acquired by political parties, but also by considerations of the quality of democracy in presidential and vice presidential elections based on the principles of the Indonesian state philosophy, or Pancasila. Thus, the presidential threshold system must be reformed using the concept of legal prisms.

Keywords

Presidential Threshold; Legal Prisms; Democracy; Election.

I. Introduction

One of the fundamental changes after the reform was the introduction of a mechanism for directly electing the president and vice president. The mechanism for the election of the president and vice president is based on the provisions of Article 6A paragraph (5) of the 1945 Constitution, which stipulates that "the procedures for electing the president and vice president shall be further regulated by law."¹ Based

¹ The 1945 Constitution of The Republic Indonesia

on this provision, the Government, together with the People's Representative Council (DPR) as the holder of power, formulated a law establishing the norms for these procedures, including regulations on the threshold system for candidacy.

The presidential threshold system is considered an extension of the provisions set forth in the 1945 Constitution, as Article 6A(2) of the 1945 Constitution only regulates the nomination of candidate pairs by political parties or coalitions of political parties participating in the election, and does not regulate the threshold that must be met if a political party nominates its candidate as a participant in the election. However, such a statement is not entirely accurate, as discussions on restrictions on the nomination of candidate pairs by political parties were one of the topics discussed during the deliberations on amendments to the 1945 Constitution during the 1999-2002 period².

Historically, the formulation of norms regarding the presidential threshold system was first included in Law No. 23 of 2003 on the Election of the President and Vice President. The provisions of the presidential threshold system have been maintained in the current electoral regulations, namely Law No. 7 of 2017 on General Elections. The presidential threshold system, as explained in the Explanatory Notes of Law No. 23 of 2003 on the Election of the President and Vice President, is a requirement that must be met by political parties or coalitions of political parties participating in the election who wish to propose a candidate pair in the presidential and vice presidential election. Therefore, a political party or coalition of political parties may only propose one candidate pair if it meets the requirement of obtaining at least 15% of the seats in the House of Representatives or obtaining at

² Ansori, L. (2017). Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019. *Jurnal Yuridis*, 4(1), 15–27.

least 20% of the valid votes nationally in the House of Representatives election.

Furthermore, Law No. 7 of 2017 on General Elections (the Election Law) contains the same provisions as the previous law regarding the presidential threshold system. However, there are differences in the minimum percentage and the basis for its attainment. Article 222 of the Election Law stipulates that a political party or coalition must obtain a minimum of 20% of the valid votes in the election of members of the House of Representatives.³ This condition requires that a minimum of 25% of the votes be obtained from valid votes in the previous election. The Explanatory Notes clarify that this threshold refers to the number of seats in the DPR or the number of valid votes, regardless of whether the party holds seats in the DPR, based on the results of the last DPR elections. The presidential threshold system, as formulated in the Election Law, is intended to strengthen the presidential system of government and form an effective government⁴. It is also an effort to reduce the number of political parties in the future.

Following the implementation of Article 222 of Law No. 7 of 2017 on Elections, the presidential nomination threshold has frequently been challenged in constitutional reviews before the Constitutional Court (MK). Political parties or coalitions of political parties must meet a threshold of 20% of seats in the House of Representatives or 25% of valid national votes from the previous legislative election to nominate a presidential and vice-presidential candidate. Some groups believe that this regulation hinders citizens' political rights while reducing the space for political competition. Thus, academics, democracy activists, and political figures continue to challenge this article before the Constitutional Court.

³ Law No. 7 of 2017 on election

⁴ Ministry of Home Affairs of the Republic of Indonesia. 2016. Academic Draft Law on the Implementation of General Elections, Jakarta: Setjend and BK DPR RI for Archives and Museums

From 2017 to 2023, the Constitutional Court received 30 requests for a judicial review of this article from individuals and civil society organizations.⁵ The Court rejected all requests during this period on the grounds that the nomination threshold was an open legal policy option within the legislature's authority. Despite criticism that the rule is substantially anti-democratic, the Court has continued to uphold the presidential nomination threshold, citing the need to maintain government stability and the effectiveness of the presidential system.

In January 2025, the Constitutional Court finally overturned the article through Decision No. 62/PUU-XXII/2024, determining that the presidential nomination threshold contradicted the principle of popular sovereignty stipulated in the 1945 Constitution. The Court ruled that the presidential threshold restricted the rights of political parties to nominate candidates and limited voters' choices in elections. This decision marked a significant moment in Indonesia's constitutional history by ending the prolonged debate over the presidential threshold's validity and fairness and paving the way for reforms to create a more inclusive and competitive nomination system. This study examines the process of revising the presidential nomination threshold following Constitutional Court Decision No. 62/PUU-XXII/2024.

II. Method

This study uses a qualitative research approach based on the constructivist paradigm. This method is used to examine natural conditions where the researcher is the key instrument. Data collection techniques use triangulation, or combination, and data analysis is

⁵ Titi Anggraini, "Setelah 30 Kali Ditolak MK", <https://law.ui.ac.id/setelah-30-kali-ditolak-mk-oleh-titi-anggraini-s-h-m-h/>, diakses pada 15 Mei 2025

inductive/qualitative.⁶ The results of qualitative research emphasize meaning over generalization. According to Moleong, the aim of qualitative research is to understand phenomena experienced by research subjects, such as behavior, perceptions, motivations, and actions, in a holistic manner through descriptive language in a natural context utilizing various natural methods.⁷ In this study, the reform of the presidential threshold system in Indonesia's presidential and vice-presidential elections is examined based on the concept of legal prisms. This approach refers to the natural conditions of the object, with the researcher's position as the key instrument for understanding the presidential threshold system phenomenon and constructing its reform. The findings are presented descriptively.

III. The Concept of Presidential Threshold and Its Application in Indonesia

An ideal electoral system is one that is conducted fairly and honestly, produces high-quality results, and is implemented competitively, practically, and concretely, with high accountability.⁸ According to Affan, the electoral system, including the presidential threshold system, must reflect fairness and honesty, and produce high-quality outcomes.⁹ These outcomes should be presidential and vice-presidential candidates capable of bringing prosperity to the people through a competitive, practical, concrete, and highly accountable process. Additionally,

⁶ Sugiyono, D. (2013). *Metode penelitian pendidikan pendekatan kuantitatif, kualitatif dan R&D*

⁷ Moleong, L. J. (2016). *Metodologi penelitian kualitatif (edisi revisi)*

⁸ Shubhan, H. (2006). Recall: Antara Hak Partai Politik dan Hak Berpolitik Anggota Parpol. *Jurnal Konstitusi*, 3(4), 3057

⁹ Gaffar, Afan. 2005. *Politik Indonesia; Transisi Menuju Demokrasi*, Yogyakarta: Pustaka Pelajar, 46.

Indonesia, a country known for its diversity and pluralism, must be considered in terms of political aspirations.¹⁰

Andreas Schedler, a senior researcher at the Central European University Democracy Institute, outlines several criteria for democratic and manipulative elections. Elections can be deemed democratic or undemocratic by examining benchmarks such as privilege, equality, inclusivity, and the significance of the elections.¹¹ Democratic elections are also reflected in the recruitment process for government leaders and representatives (DPR/DPD/DPRD).¹² The principle of democracy is reflected in the aspect of 'legitimacy,' while the principle of technocracy is reflected in the aspect of 'competence.' Balancing the principles of 'legitimacy' and 'competence' will result in public policies that can accelerate the realization of public welfare. From this perspective, the 'recruitment' process must be based on democratic principles guided by legal principles, thereby producing leaders who are accepted by the majority of the public (legitimate) due to their intellectual integrity, moral character, and high performance (competence). This framework strengthens the position of the executive branch, which bears a significant burden in enhancing collective well-being. Therefore, the conduct of presidential and vice-presidential elections must adhere to the principles of 'legality, legitimacy, and competence.' From the perspective outlined above, the existence of the presidential threshold system warrants reconsideration, and even the possibility of reform.

One effort to reform the law utilizes the concept of prismatic law. The prismatic concept can combine conflicting ideas, such as two types

¹⁰ Wijaya, I., & Putra, D. M. (2014). Mengukur Derajat Demokrasi Undang-Undang Nomor 42 Tahun 2008 tentang Pemilihan Umum Presiden dan Wakil Presiden. *Jurnal IUS*, 2(6), 556–571.

¹¹ Diamond, L. (2002). Elections without democracy: Thinking about hybrid regimes. *Journal of Democracy*, 13(2), 21–35.

¹² Hoesein, Z. A. (2010). Pemilu Kepala Daerah dalam Transisi Demokrasi. *Jurnal Konstitusi*, 7(6), 1–24.

of legal systems.¹³ Some of its elements can also be combined to form a new system. Similarly, legal prismatics—also referred to as prismatic law—is a legal system that integrates elements from various legal systems to form a new, comprehensive system.¹⁴ Based on legal prismatics, the hope is that a presidential threshold system will emerge that can legitimize public support and uphold democratic values based on the principles of the Indonesian state philosophy, or *pancasila*. Additionally, the basic principles of elections must inform the electoral process for nominating the president and vice president, as stipulated in Article 22E, paragraph 1, of the 1945 Constitution.¹⁵

The presidential threshold system provides political parties with the initial capital necessary for the government to obtain the support of the majority of members of parliament. Mark P. Jones states, "...all evidence indicates that the functioning of presidential systems is greatly enhanced when the president is provided with a majority or near-majority in the legislature." According to Jones, efforts to strengthen the presidential system are closely related to strong political support for the president in the legislature. He defines adequate support as either majority support (more than 50%) or near-majority support (close to 50%). If the president has less than this threshold, it will be difficult for him or her to carry out his or her government agenda. Consequently,

¹³ Mahfud, M. (2007). *Perdebatan hukum tata negara pasca amandemen konstitusi*. Lp3es.

¹⁴ Hidayat, A. (2013). *Pancasila sebagai kaidah Penuntun dalam Pembentukan Hukum Nasional*. Disajikan Dalam Seminar Nasional Menyoal Pengaturan Tenaga Kesehatan Dalam RUU Tenaga Kesehatan, Makalah, UNIKA Semarang.

¹⁵ Fahmi, K. (2016). Menelusuri konsep keadilan pemilihan umum menurut UUD 1945. *Jurnal Cita Hukum*, 4(2).

the presidential system becomes less effective, or worse, it could lead to government failure.¹⁶

However, it is important to note that the presidential threshold system, which reflects support for the candidate pair, does not guarantee that such support will continue until the government is formed. At the nomination stage, the presidential threshold system is seen as opening the door for large political parties to determine the presidential and vice-presidential candidates. Smaller parties have no right to determine their own candidates and can only follow what the large parties dictate, thereby denying smaller parties equal and fair opportunities. According to Bagir Manan, however, rights are the power to act or not to act.¹⁷ Therefore, every political party participating in the election has the power to nominate or not nominate a president and vice president. Linked to the concept of people's sovereignty, the presidential threshold system's formulation is not in harmony with it the concept of people's sovereignty established in Indonesia.

From a sociological perspective, the presidential threshold system is considered the cause of polarization among social groups. This polarization arises because the system limits the number of candidate pairs that can participate in presidential and vice presidential elections. This phenomenon occurred in the 2014, 2019, and 2024 elections. The presidential threshold also limits voters' choices in presidential and vice-presidential elections because these choices are determined by political parties and coalitions. Based on its implementation, the presidential threshold system has led to divisions among the public and disregards citizens' political rights to vote and be voted for in presidential and vice

¹⁶ Hanan, D. (2016). Memperkuat Presidensialisme Multipartai di Indonesia: Pemilu Serentak, Sistem Pemilu dan Sistem Kepartaian. *Jurnal Universitas Paramadina*, 13, 1451–1475.

¹⁷ Manan, B. (2000). *Wewenang Provinsi, Kabupaten, dan kota dalam rangka otonomi daerah*. Bandung: Fakultas Hukum Unpad.

presidential elections. It also fails to ensure political stability and fosters authoritarianism and abuse of power.

IV. Constitutional Court Decision Number 62/PUU-XXII/2024 and Its Impact on Democracy in Indonesia

The post-amendment Constitution of 1945, specifically Article 24C, paragraph (1), which declared that "The Constitutional Court has the authority to adjudicate the first and last instances whose decisions are final..." is where the character of decisions made by the Court was first codified. The irrevocable and final nature of the Constitutional Court's rulings is reinforced by this constitutional standard, which has been reaffirmed by later legal frameworks like Law Number 24 of 2003 concerning the Constitutional Court and Law Number 48 of 2009 concerning Judicial Power.¹⁸ The presidential threshold requirement for nominating presidential candidates has been an ongoing issue since it was first introduced.¹⁹ This rule mandates that political parties or coalitions must hold at least 20% of seats in parliament or have won 25% of the popular vote in the previous legislative elections to field a presidential ticket. From the start, it faced criticism for limiting new parties and independent candidates while reducing voter choices.

¹⁸ Suparto, S., Chaidir, E., Ardiansyah, A., & Santos, J. G. (2023). Establishment of Electoral Court in Indonesia: Problems and Future Challenges. *Journal of Indonesian Legal Studies*, 8(2), 501-544. <https://doi.org/10.15294/jils.v8i2.72316>

¹⁹ Sukmawan, Denny Indra, and Syaugi Pratama. 2023. "Critical Review of the Constitutional Court's Decision on the Presidential Threshold: Tinjauan Kritis Mengenai Putusan Mahkamah Konstitusi Tentang Ambang Batas Pencalonan Presiden". *Jurnal Konstitusi* 20 (4):556-75.

Over the years, the Constitutional Court has received numerous legal challenges against the presidential threshold, from public figures, academics, small parties, and individual citizens. The main arguments revolved around violating electoral fairness, disregarding popular sovereignty, and restricting constitutional rights to vote and be elected. Critics also questioned the logic of using legislative results to determine presidential candidacy eligibility in separate elections.

However, the Court has consistently rejected these petitions, viewing the threshold as an "open legal policy" under the purview of lawmakers rather than a constitutional matter to be overturned.²⁰ It reasoned that the measure aimed to simplify the party system and ensure effective governance. But some quarters felt the Court took an overly normative stance by not progressively interpreting the constitution for greater democratic openness and healthy political competition. The controversy is expected to persist as long as the presidential threshold remains. With rising political participation and potential figures outside major parties, calls to lower or abolish the threshold could resurface in future elections. There are also pushes for comprehensive electoral reforms to make the system more inclusive and better reflect direct popular aspirations.

The presidential threshold has historically sparked various pros and cons among the public. The turmoil caused by this system has prompted some people to reject it. One of these individuals is Efendi Ghazali, who is seeking to repeal the regulations governing this system. Ghazali pursued this goal by filing a request for a judicial review of the Election Law with the Constitutional Court, as recorded in Case No. 14/PUU-XI/2013. He based his request on the assumption that the

²⁰ Sholahuddin Al-Fatih, "Akibat Hukum Regulasi tentang Threshold dalam Pemilihan Umum Legislatif dan Pemilihan Presiden," *Jurnal Yudisial* 12, no. 1 (2019): 35-36, <https://doi.org/10.29123/jy.v12i1.258>.

presidential threshold system contains serious logical flaws and does not support a stable and effective presidential government.²¹

However, the Constitutional Court rejected various requests for judicial review of the presidential threshold on the grounds that it is an election policy for the president and vice president and does not conflict with the constitution because it is not discriminatory. At least 30 judicial review petitions were submitted to the Constitutional Court until, in January 2025, the Constitutional Court finally granted the petition to cancel the application of the presidential threshold in the election of the president and vice president of the Republic of Indonesia through Constitutional Court Decision Number 62/PUU-XXII/2024.

On January 2, 2025, the Constitutional Court granted a judicial review of Article 222 of Law Number 7 of 2017. This law regulates the presidential threshold, which is defined as 20% of the seats in the House of Representatives or 25% of the valid national votes. The Court stated that this provision contradicts Article 6 of the 1945 Constitution, which pertains to the presidential election process. The Court considered the high presidential threshold of 20%, which is too high and does not allow new and medium-sized parties to compete. Consequently, presidential elections are limited to candidates from major parties, hindering the emergence of alternative candidates who could bring change and innovation to the country. Additionally, applying the presidential threshold strengthens the political hegemony and oligarchy of the political elite in parliament by creating strong coalitions and weakening the opposition. However, a healthy democracy requires a strong, balanced opposition to create checks and balances within the government.²²

²¹ Ariviani, R., Asy'ari, H., & Hardjanto, U. S. (2016). Analisis Putusan Mahkamah Konstitusi Nomor 14/Puu-Xi/2013 Berkaitan Dengan Pemilihan Umum Serentak Di Indonesia. *Diponegoro Law Journal*, 5(4), 1–11.

²² Constitutional Court Decision Number 62/PUU-XXII/2024.

Furthermore, abolishing the presidential threshold would create a more open and transparent political contest. Through this mechanism, several qualified alternative candidates who would otherwise be blocked by the candidacy requirement may emerge in the 2029 elections. According to the Constitutional Court, implementing a 20% presidential threshold in Indonesia's presidential elections would be inconsistent with the principles of inclusive and transparent democracy. Abolishing the presidential threshold provision would encourage political parties to nominate the best candidates, strengthen the political system, and create a healthier contest. Therefore, the presidential threshold provision should be abolished to strengthen democracy in Indonesia.²³

V. Concept of Redesigning the Presidential Threshold System Following Constitutional Court Decision Number 62/PUU-XXII/2024

Indonesia is a democratic country with multy parties system and direct election of president and vice president. Practically, presidential threshold cant be hold multy parties system in Indonesia.²⁴ Updates to the presidential threshold system must refer to values capable of overcoming problems to make the presidential and vice presidential elections democratic. In short, the presidential threshold system does not yet meet the democratic election criteria of freedom of supply,

²³ *Ibid*

²⁴ Sumodiningrat, Aprilian. "Meninjau Ulang Ketentuan Presidential Threshold Dalam Pemilihan Presiden Dan Wakil Presiden Di Indonesia." *Jurnal Kajian Pembaruan Hukum* 1, no. 1 (2021): 49-74.

inclusion, insulation, and decisiveness.²⁵ Thus, it must be formulated with reference to these criteria. Additionally, the principles of Pancasila democracy must be referenced, as they require the values contained in the fourth principle of Pancasila. The details are as follows:

First, to meet the freedom of supply criterion, political parties must be placed on an equal footing. Thus, the presidential threshold system must include provisions that allow political parties to exercise their right to propose candidate pairs, as each party represents Indonesia's pluralistic society's aspirations. Thus, every political party designated as an election participant should be granted the freedom to propose presidential and vice-presidential candidate pairs, either independently or in coalition with other political parties. Creating an equal position among political parties is also in line with the "value of deliberation," which requires a spirit of kinship in elections.

The equality of political parties may be compromised if they do not meet the criteria outlined in this discussion, which may affect their right to propose candidates. This inequality means that political parties cannot exercise their right to propose candidate pairs. This requirement is a reasonable effort to ensure that political parties do not deviate from their role as pillars of democracy and to support democratic elections.

Second, to meet inclusion criteria, political parties must open space for citizen participation, becoming parties that can be proposed as candidate pairs in presidential and vice presidential elections. In short, political parties provide a means for citizens to register as presidential and vice-presidential candidates proposed by political parties. This requirement could be formulated as an obligation for political parties to organize activities, such as open conventions, so every citizen who meets the presidential and vice-presidential candidate criteria outlined in legislation can register without exception. This formulation also

²⁵ Rauta, Umbu. "Menggagas pemilihan presiden yang demokratis dan aspiratif." *Jurnal Konstitusi* 11, no. 3 (2014): 600-616.

emphasizes the value of deliberation, which requires equality among Indonesian citizens.

Third, to meet insulation criteria, the presidential threshold system must include provisions that allow citizens to participate in selecting candidate pairs. In this case, the proposing political party or coalition of parties may be required to conduct open and democratic recruitment, allowing every citizen to provide suggestions, input, or objections regarding the selected candidates. This idea is also an improvement of democratic values, which require respect for the people's voice in political activities, by providing space for their role and influence in determining public officials.

Pippa Norris and Joni Lovenduski formulated the model of democratic political recruitment. Examples of democratic recruitment models include meritocratic, affirmative action, and radical models.²⁶ Political parties can use these models to recruit candidates for president and vice president. According to Pippa Norris and Joni Lovenduski, political parties or coalitions must use these models to select candidates based on democratic, fair, efficient, and effective criteria. These criteria serve as ethical values to which political parties must adhere when recruiting candidates. If conceptualized using the IPO (input-process-output) method,²⁷ these criteria can be incorporated as outlined in the table below.

²⁶ Norris, Pippa, & Joni Lovenduski. 1995. *Representasi Politik dan Rekrutmen: Gender, Ras, dan Kelas di Parlemen Inggris*, New York: Cambridge University Press.

²⁷ Gastil, John and Richards, Robert C. and Ryan, Matt and Smith, Graham, *Testing Assumptions in Deliberative Democratic Design: A Preliminary Assessment of the Efficacy of the Participedia Data Archive as an Analytic Tool* (June 27, 2017). *Journal of Public Deliberation*, 13(2), Article 1., Available at SSRN: <https://ssrn.com/abstract=2993451>

Table 1: Overview of the Recruitment Process
 Candidates for President and Vice President of the Democratic Party

No	Process	Criteria	Description
1.	Input	Democratics	Provide open opportunities for every citizen, without exception, to participate in the recruitment process.
2.	Process	Fair	The selection process uses objective, non-discriminatory criteria.
3.	Process	Efficient	Carefully select candidates by providing the public with an opportunity to submit suggestions, criticisms, and objections. This should be carried out on time.
4.	Output	Effective	Able to present candidates who are in accordance with the criteria determined by laws and regulations and the will of the people

Source: Compiled from various sources.

The first criterion is democratic, meaning the recruitment process is open to all citizens, regardless of social status, poverty, ethnicity, or religion. The recruitment process must ensure that the candidates are proposed from the community (bottom-up) and reflect its power in the selection process, preventing domination by the political party elite (top-down). Every citizen is given the opportunity to participate in the recruitment process by meeting reasonable qualifications such as age limits, citizenship status, and specific requirements such as ethical values, integrity, a lack of a history of corruption, achievements, and requirements that reflect the party's characteristics. Political parties must provide this space to enable citizens to exercise their fundamental

political right—the right to be elected. Additionally, other citizens are involved in selecting suitable candidates for political parties to nominate.

However, political parties may also need to require the following to ensure that presidential and vice-presidential candidates are serious about participating in the recruitment process, such as:

1. Organizing activities such as open conventions, so that every citizen who feels they meet the criteria as a presidential and vice-presidential candidate must obtain minimum support from the community or community organizations;
2. A deposit of a certain amount that is affordable for presidential and vice-presidential candidates; and/or
3. Other requirements that can be used to gauge the seriousness of applicants for presidential and vice-presidential candidates.

Fair criteria, meaning that political parties in the selection process use objective and non-discriminatory criteria by treating all selected candidates equally and giving them the same opportunities, without comparing candidates based on factors such as ethnicity, race, religion, gender, or social status, provided they meet the qualifications outlined in the democratic criteria above. Therefore, parties can conduct recruitment in at least every province in Indonesia with an independent team formed to reflect the absence of differences in opportunities among Indonesian citizens. In this process, the party chairman or others in strategic positions must not interfere with the process being carried out.

Efficiency is defined as the careful execution of candidate recruitment activities, providing space for the public to submit suggestions, criticisms, and objections regarding the proposed candidates. This criterion also requires timeliness in accordance with the scheduled stages of the election process. The final criterion is

effectiveness. It requires the recruitment process organised by the party to produce candidates who are capable, worthy and have integrity, and who have the ability to become the desired President and Vice President.

Various descriptions of the requirements for fulfilling this criterion include requiring political parties to have technical rules in their Articles of Association and Bylaws regarding the democratic recruitment of presidential and vice presidential candidates, fulfilling democratic, fair, efficient and effective criteria.

Fourthly, to fulfil the decisiveness criterion, the presidential threshold system must contain sanctions for political parties. The law actually stipulates sanctions for political parties committing violations, as set out in Article 40 of Law No. 2/2008 on Political Parties. Law No. 2 of 2011 concerning Amendments to Law No. 2 of 2008 concerning Political Parties.²⁸ From the above description, it can be concluded that the reform of the presidential threshold system must include elements that can be used to set requirements for political parties proposing candidate pairs. However, the following requirements can be applied if the position of political parties participating in the election is equal, with exceptions. The conditions referred to are as follows:

1. Organising activities that allow every citizen to participate in the recruitment process for presidential and vice presidential candidates;
2. Political parties must have a democratic and open recruitment mechanism for presidential and vice presidential candidates in their bylaws and organise it.
3. Not committing acts categorised as election violations or other prohibited acts during the previous election period.

Some ideas for reforming the presidential threshold system can be categorised as qualitative values, which are certainly in accordance with

²⁸ Law Number 2 year 2008 on Political Parties

the principles of Pancasila. The concept of elections based on Pancasila requires not only that elections be carried out to compete for people's votes, but also that ethical values be upheld in their implementation. Therefore, qualitative elements can be used to inform the composition of a democratic presidential threshold system in accordance with the values of Pancasila.

VI. The Concept of Legal Prismatics for Reforming The Presidential Threshold

In this research, the concept of legal prismatics is employed as a tool to reform the presidential threshold system, whereby the quantitative elements require updating and/or integration with qualitative elements. This concept is employed to renew the system, given that several laws have been formed prismatically and function as the laws required by the community.²⁹

The concept of prismatic law refers to the prismatic model formulated by Fred W. Riggs:³⁰ "...in the prismatic model, we may not find a neat intermediate scope of power halfway between broad and narrow. Rather, we find both broad and narrow scopes simultaneously in the phenomenon of overlapping, which I call 'bifocal,' based on the disengagement of authority and control". Riggs's view is that the prismatic model does not have a neat scope of intermediary power centered between broad and narrow. Instead, broad and narrow scopes are found simultaneously in the phenomenon of overlapping. One example of the prismatic model is the blend of the sacred-secular scale. According to Riggs, there will be considerable persistence between a

²⁹ Arifudin, Arifudin, and Hamdan Zoelva. "Pembaharuan Sistem Presidential Threshold Di Indonesia Berdasarkan Konsep Prismatika Hukum." *Jurnal Hukum Progresif* 10, no. 2 (2022): 127-140.

³⁰ Riggs, F. W. (1963). *Bureaucrats and political development: a paradoxical view*. *Bureaucracy and Political Development*, 120–167.

sacred orientation and a secular orientation in the construction of a prismatic system. This results in an S-shaped correlation curve. Thus, the prismatic model can be understood as a space in which various elements coexist.

In addition to Riggs, Mahfud MD discussed this concept in order to examine the structure of the Indonesian ideology of Pancasila and to standardize the term "legal prismatic concept." Mahfud essentially explained that the prismatic model was used to form Pancasila.³¹ This model is based on the combination of various values, models, and systems within one framework. Although there are conflicting or different values within this framework, they can simultaneously exist within a prismatic system.

The concept of legal prismatics in the Indonesian philosophy of state, or Pancasila, shows the existence of various combinations of values, models, and systems. These combinations are formed by considering the benefits of the various values, models, and systems for Indonesia, rather than focusing on differences. Additionally, this concept requires dynamic thinking to examine elements that, although conflicting, can be useful when combined.

From the above description of the concept of legal prismatics, it can be concluded that the concept has the following elements:

1. Mixing, integrating, and blending.
2. Conflicting elements.
3. Construction of prismatic systems.

The presidential threshold system in the Election Law is a provision that requires a quantitative element to be applied when proposing and determining the winner of a candidate pair. In contrast, the 1945 Constitution only applies the quantitative element to determining the winner of the candidate pair. As shown in the following

³¹ Mahfud, M. (2007). *Perdebatan hukum tata negara pasca amendemen konstitusi*. Lp3es.

table, the difference in the use of quantitative elements between the 1945 Constitution and the Election Law is apparent. According to Affan Gaffar, the ideal electoral system is one that is conducted fairly and honestly, has quality outputs, and is implemented competitively, practically, and concretely with high accountability.³²

VII. Conclusion

The presidential threshold system in Indonesia's presidential and vice presidential elections has not realized democracy due to its formulation, which is based on a single quantitative element: the acquisition of DPR seats or national valid votes. 3. Following Constitutional Court Decision Number 62/PUU-XXII/2024 regarding the presidential threshold system, which is currently not in effect, reform of the system's formulation is necessary. This reform is necessary because the system's purpose of simplifying parties and forming an effective presidential government cannot be realized. In fact, it results in the election of the president and vice president becoming undemocratic. Based on these considerations, the government and the DPR, as the holders of legislative power, must urgently renew the presidential threshold system with a prismatic approach. This will ensure that the elections of the president and vice president are democratic and prevent oligarchic groups from gaining power in the Indonesian government.

VIII. References

Ansori, L. (2017). Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019. *Jurnal Yuridis*, 4(1), 15–27.

³² Shubhan, H. (2006). Recall: Antara Hak Partai Politik dan Hak Berpolitik Anggota Parpol. *Jurnal Konstitusi*, 3(4), 3057.

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